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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAARTEN PETER BODLAENDER

Appeal 2009-5009
Application 10/520,199
Technology Center 2100

Before LANCE LEONARD BARRY, JEAN R. HOMERE, and STEPHEN
C. SIU *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL ¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-5 and 7-20. The Appellant appeals therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The Appellant describes the invention at issue on appeal as "associating a classification parameter with [a] data object [in a database], wherein the classification parameter is associated with the data object when a value of the source parameter satisfies at least one criterion." (Spec. 2.) "In this way, data objects may be classified prior to query and search, and a search may be aimed at one parameter only, the classification parameter. This highly reduces the search time, especially when a query with multiple variables is inputted." (*Id.*)

ILLUSTRATIVE CLAIM

1. A method for classification of a data object in a database, comprising:

obtaining at least one source parameter associated with the data object, and associating a classification parameter with the data object based on a value of the at least one source parameter satisfying at least one criterion corresponding to the classification parameter,

wherein the database includes further data objects having at least one further source parameter associated therewith and wherein the method includes:

identifying similar further data objects having equal values of at least one further classification parameter;

identifying similarity of values of the further source parameter of the further similar data objects having equal further classification parameters; and

associating the further classification parameter with the data object when at least one of the at least one source parameter of the data object is similar to the further source parameter of the further similar data objects.

REJECTIONS

Claims 1-5, 7, and 9-20 stand rejected under 35 U.S.C. § 102(b) as anticipated by *Augmented Album: Situation-dependent System for a Personal Digital Video/Image Collection* ("Hewagamage").

Claim 8 stands rejected under U.S.C. § 103(a) as obvious over Hewagamage and USP 6,009,439 ("Shiomi").

CLAIMS 1-5 AND 9-20

Based on the Appellant's arguments, we will decide the appeal of claims 1-5 and 9-20 based on claim 1 alone. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

Therefore, the issues before us are (1) whether the Examiner erred in finding that Hewagamage discloses at least two classification parameters as required by claim 1 and (2) whether he erred in finding that the same reference discloses storing further classification parameters and similarity

value criterion for associating a new data object with the further classification parameter as required by claims 7 and 8.

FINDINGS OF FACT

Hewagamage describes its invention as follows.

Augmented Album is an application developed to demonstrate how the user-situations can be used to provide easy-to-use and easy-to-remember interface for the management and retrieval of digital pictures that consist of both digital video clips and still images. In this system, the contextual information such as the location, time, and user's events, are captured when a picture is taken. It represents the meaning of the picture as well as its content information to some extent and thus, benefits us to retrieve images/video clips. At the same time, the contextual information could be used to make more realistic organization of those pictures on a computer system.

ANALYSIS

Regarding the first issue, "[i]t is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question" *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

Here, Hewagamage "take[s] three parameters into account to interpret user's active context as we treat the personal photographing is a mobile user activity, namely the user's geographic location, time and corresponding events that motivate the user to take pictures." (P. 323, § 1.) We agree with the Examiner's finding that the reference's event parameter constitutes a

classification parameter "of a group of pictures having similar time and/or location (source parameter) when being taken." (Ans. 18.) The Appellant "[a]ssum[es], *in argument*, that Hewagamage's event parameter is a classification parameter based on the location and/or time parameter," (App. Br. 8.), but argues that " the Office action fails to identify where Hewagamage teaches a *further* classification parameter" (*Id.*)

The reference, however, teaches more than one event, each of which would have a corresponding event classification parameter. For example, Hewagamage explains that plural "[e]vent categories are used to group images/video clips as a way to show the contextual relevancy of those icons. When the user selects a particular event category, then icons appeared in the Map and Time Frame Components are restricted to be the ones in that category." (P. 325, § 4.)

Consequently, we agree with the Examiner's finding that "when a user selects an event category (classification parameter) with predefined criterion and/or condition for its pictures' time and/or location (source parameter), any picture that has satisfied time and/or location will be grouped to the particularly selected event category (classification parameter)." (Ans. 18.) Therefore, we *conclude* that the Examiner did not err in finding that Hewagamage discloses at least two classification parameters as required by claim 1.

Regarding the second issue, [i]n an *ex parte* appeal, the Board "is basically a board of review — we review . . . rejections made by patent examiners." *Ex parte Gambogi*, 62 USPQ2d 1209, 1211 (BPAI 2001). "The review authorized by 35 U.S.C. Section 134 is not a process whereby the examiner . . . invite[s] the [B]oard to examine the application and resolve

patentability in the first instance." *Ex parte Braeken*, 54 USPQ2d 1110, 1112 (BPAI 1999). "The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

Here, the Examiner finds that "(Events Component in the system is [sic] used to shows event categories grouping images/video clips as a way to shows contextual relevancy of data object taken at same location and/or time, [Page 325, Left Column, Lines 50-58], [Page 325, Right Column, Lines 50- 58])." (Ans. 8-9.) The Appellant argues that "Hewagamage fails to teach storing further classification parameters and similarity value criterion for associating a new data object with the further classification parameter" (Appeal Br. 9.) We agree with the Appellant that "the Office action fails to identify where Hewagamage provides this teaching." (*Id.*) The Examiner does not allege, let alone show, that the addition of Shiomi cures the aforementioned deficiency of Hewagamage.

We will not resort to speculations or assumptions to fix the Examiner's failure to explain where, if anywhere, the reference teaches such storing. Therefore, we *conclude* that the Examiner erred in finding that Hewagamage discloses storing further classification parameters and similarity value criterion for associating a new data object with the further classification parameter as required by claims 7 and 8.

DECISION

We affirm the rejection of claims 1-5 and 9-20 but reverse the rejections of claims 7 and 8. No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED-IN-PART

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